

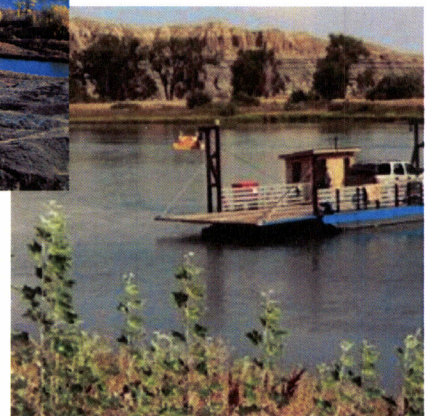
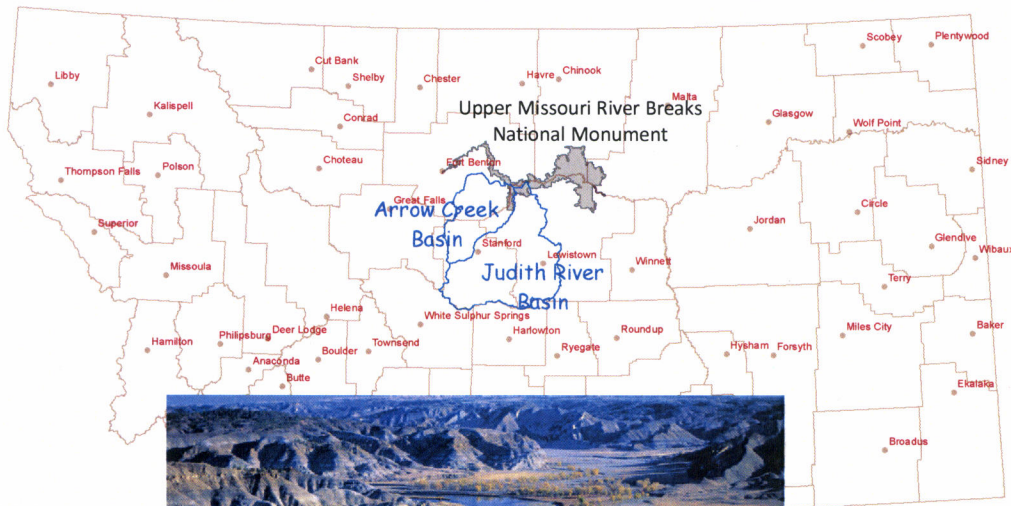
# Upper Missouri River Breaks National Monument Water Compact

Senate Bill No. 88

Introduced by Senator Dick Barrett

By Request of the Reserved Water Rights Compact Commission

January 23, 2013  
Senate Natural Resources Committee

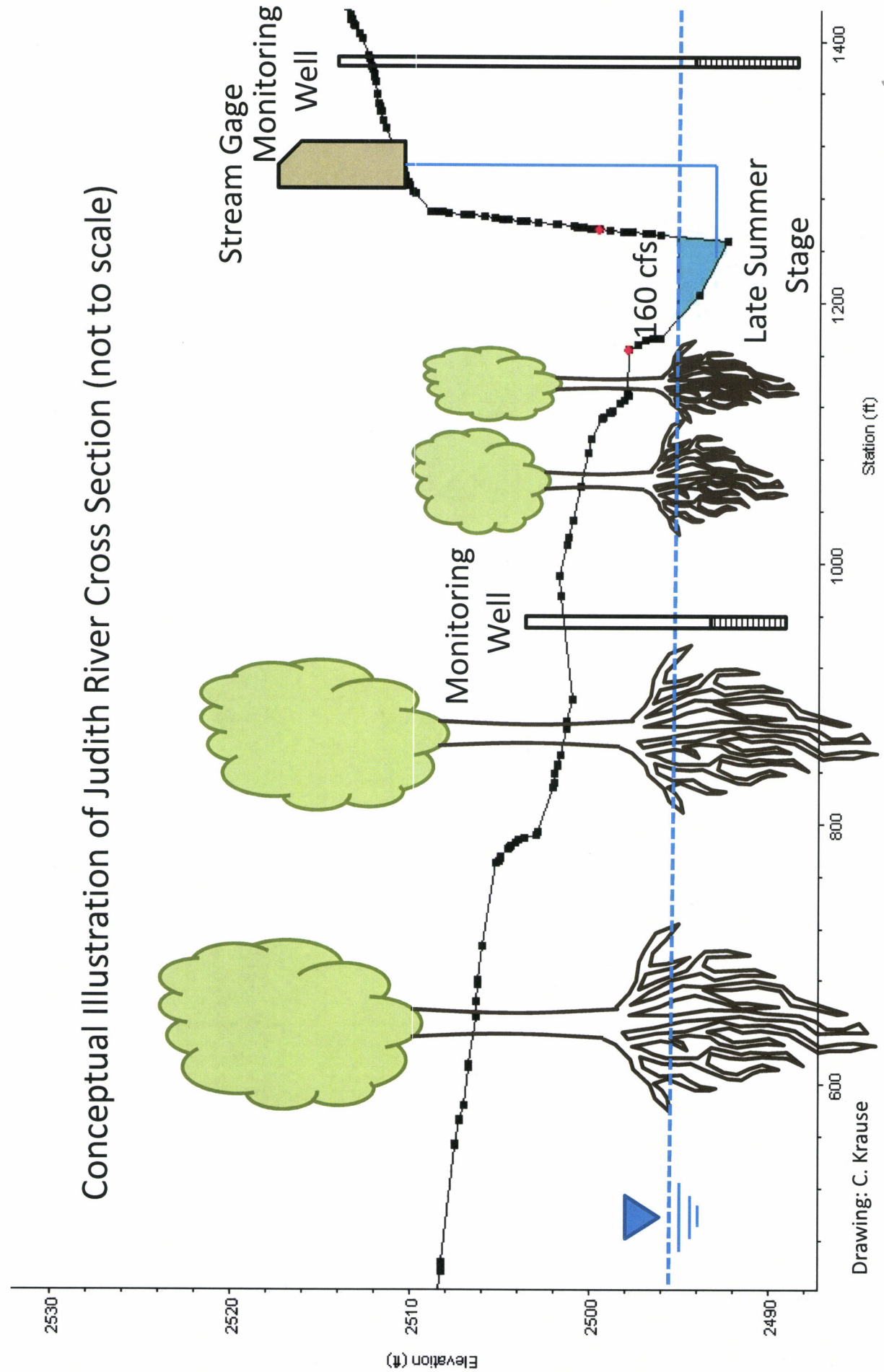


**SB 88 Fact Sheet**  
**Water Rights Compact Montana-US Bureau of Land Management**  
**Upper Missouri River Breaks National Monument**

The Montana Reserved Water Rights Compact Commission and U.S. Bureau of Land Management (BLM) have agreed to the terms of a proposed compact for the Upper Missouri River Breaks National Monument. The key provisions are:

1. **Protection of all existing water rights** arising under State law with a priority date earlier than June 1, 2012. All of these existing rights are senior in priority to any rights granted to the BLM under this compact.
2. **No reduction in the amount of water available for future development** in the Judith Basin as a result of this compact.
3. **Continued exception to permitting for domestic wells, stock ponds,** and other uses that meet the requirements for exception to permitting as listed in 85-2-306 MCA. These uses will not be subject to call by the BLM under the specifications of this compact.
4. **Water Right:** In settlement of the Monument's Reserved Water Right claim, a water right is granted on both the Judith River and Arrow Creek.
  - a. Judith River: The Judith River water right is in the amount of 160 cubic feet per second (cfs) measured at the USGS gaging station near the confluence of the Judith River with the Missouri River. The period of use is January 1 through December 31 of each year. This right shall run concurrently and junior in priority to a Montana Fish, Wildlife & Parks right for the same source, flow rate, and period of use.
  - b. Arrow Creek: The Arrow Creek water right is in the amount of 5 cfs measured where the Monument boundary intersects with Arrow Creek. The period of use is March 1 through July 31 of each year. A proportionally lower flow rate at the may be determined at an alternate measurement point.
5. **Priority Date:** The reserved water right will have a priority date of January 17, 2001, but this reserved right will be subordinate to state-based permits with a priority date before June 1, 2012.
6. **Restriction on Mainstem Impoundments:** New mainstem impoundments under this Compact not otherwise excepted from permitting requirements under Montana law will not be permitted on the following reaches of the Judith River and Arrow Creek. Off stream impoundments will continue to be permitted under DNRC permitting procedure.
  - a. Judith River: from the confluence of the Middle and South Forks of the Judith River downstream to its confluence with the Missouri River.
  - b. Arrow Creek: from its confluence with Hay Creek downstream to its confluence with the Missouri River.
7. **Ramped Diversion Requirement:** Flows on both the Judith River and Arrow Creek that have not already been appropriated as of the date of this Compact will be available for future state-based development, subject to the Reserved Water Right and applicable permit restrictions. New permits issued after the date on which this Compact is ratified will be subject to a ramped diversion requirement for diversions greater than 20 cfs capacity. Direct from source diversions from the Judith River and Arrow Creek that have a diversion capacity greater than 20 cfs will be allowed an increase in diverted water of no more than 20cfs per 24 hour period.

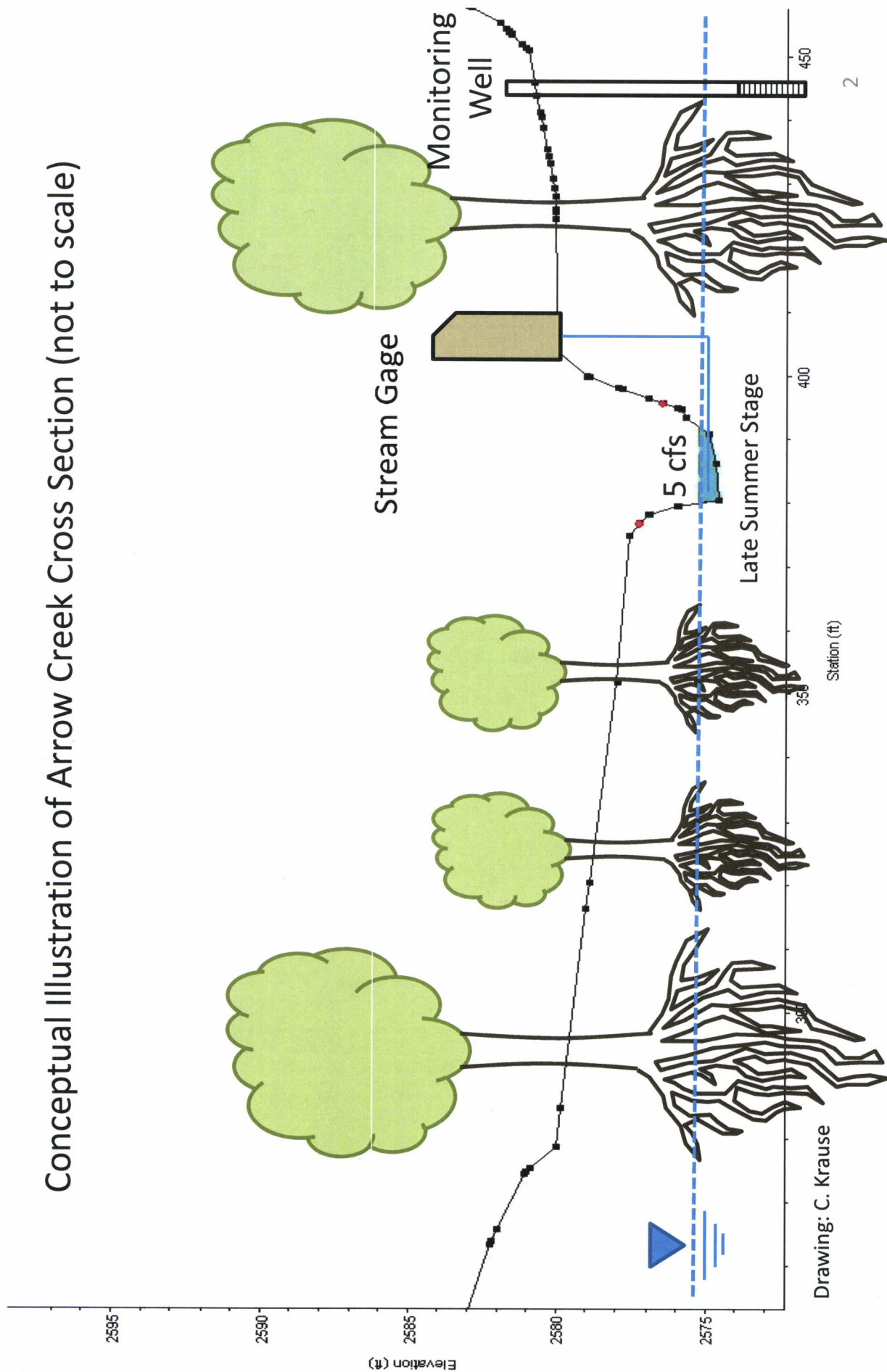
# Conceptual Illustration of Judith River Cross Section (not to scale)



Drawing: C. Krause

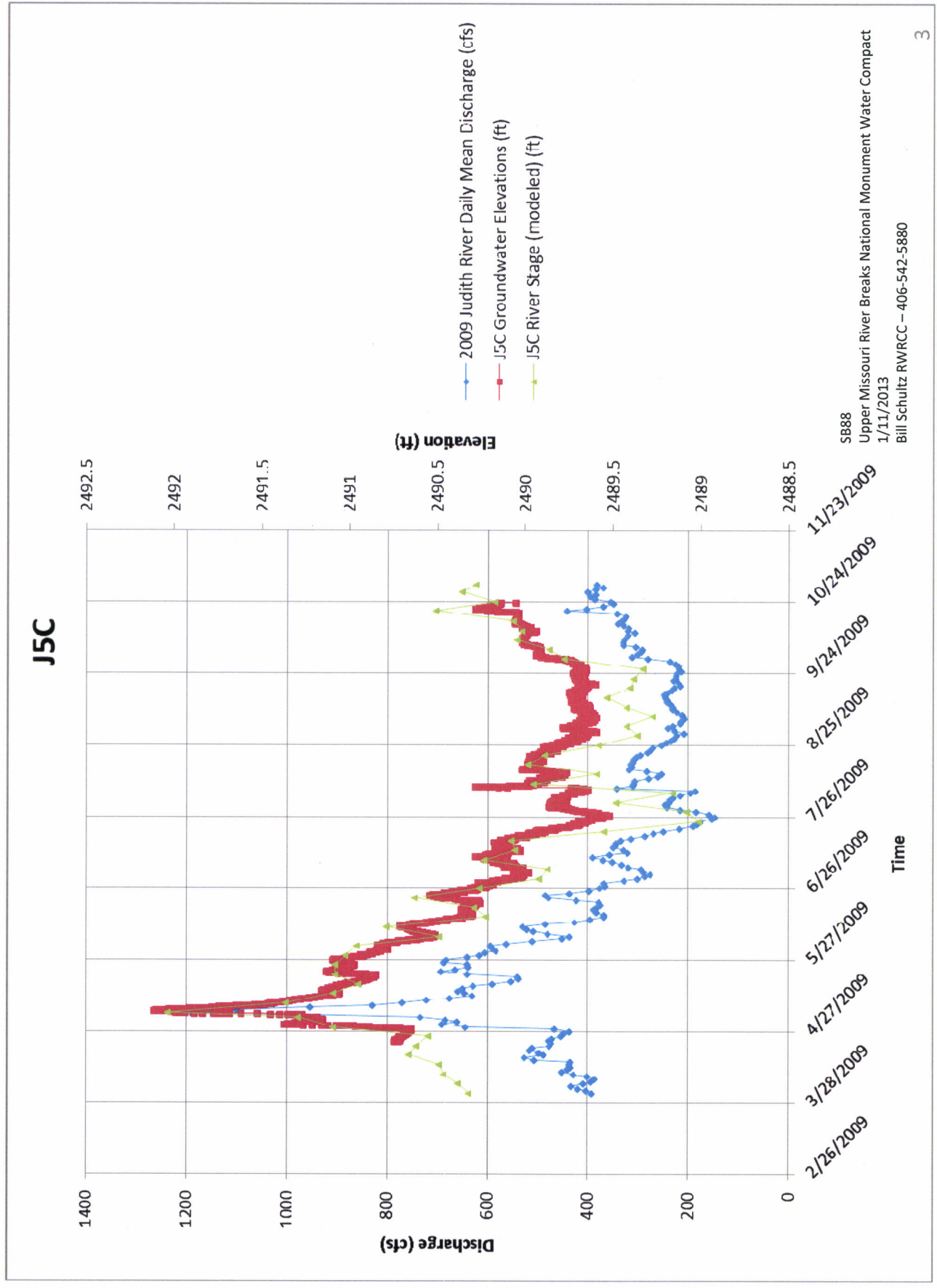


## Conceptual Illustration of Arrow Creek Cross Section (not to scale)



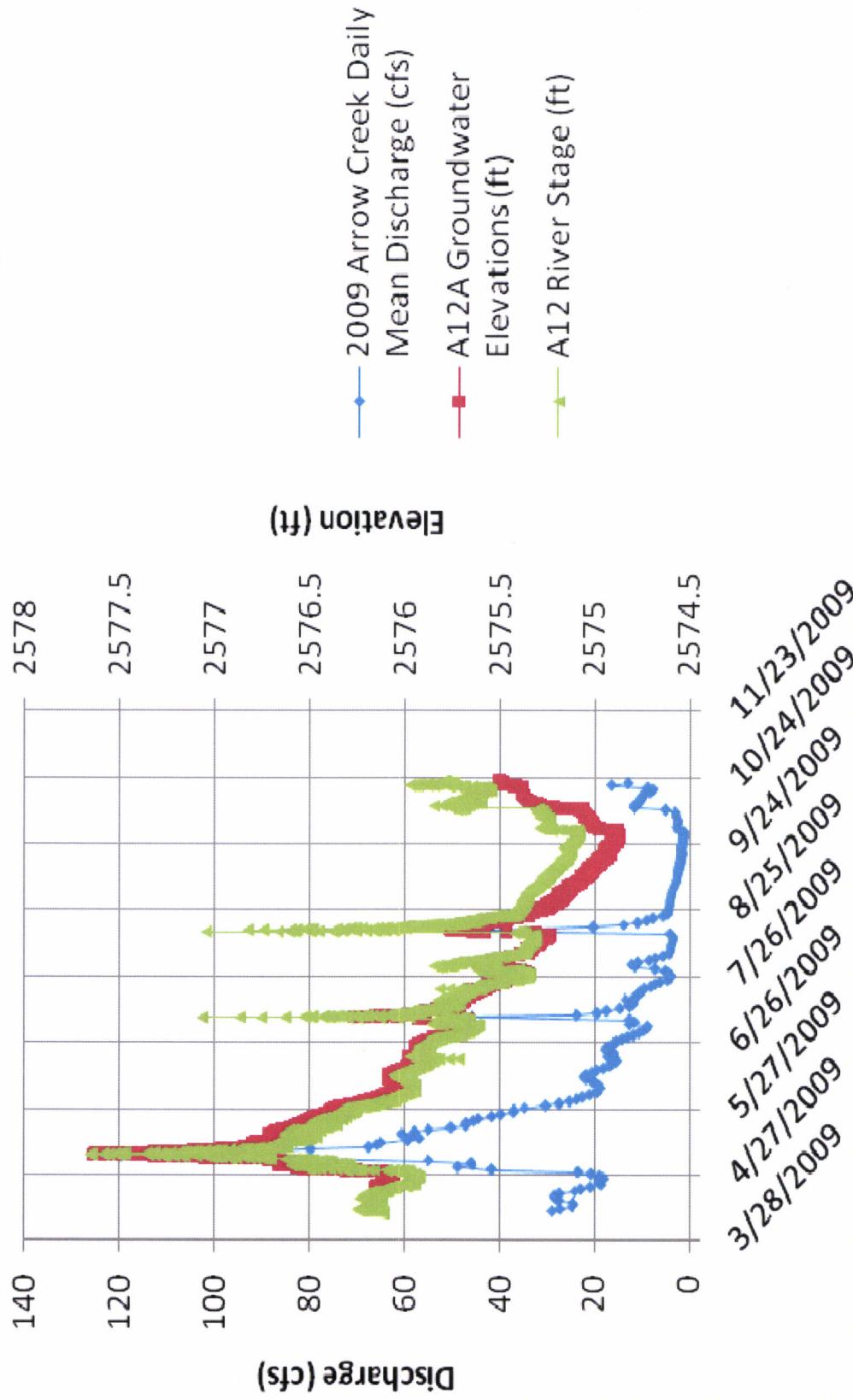


# Comparison of River Flow, River Stage, and Groundwater Elevation at Judith River



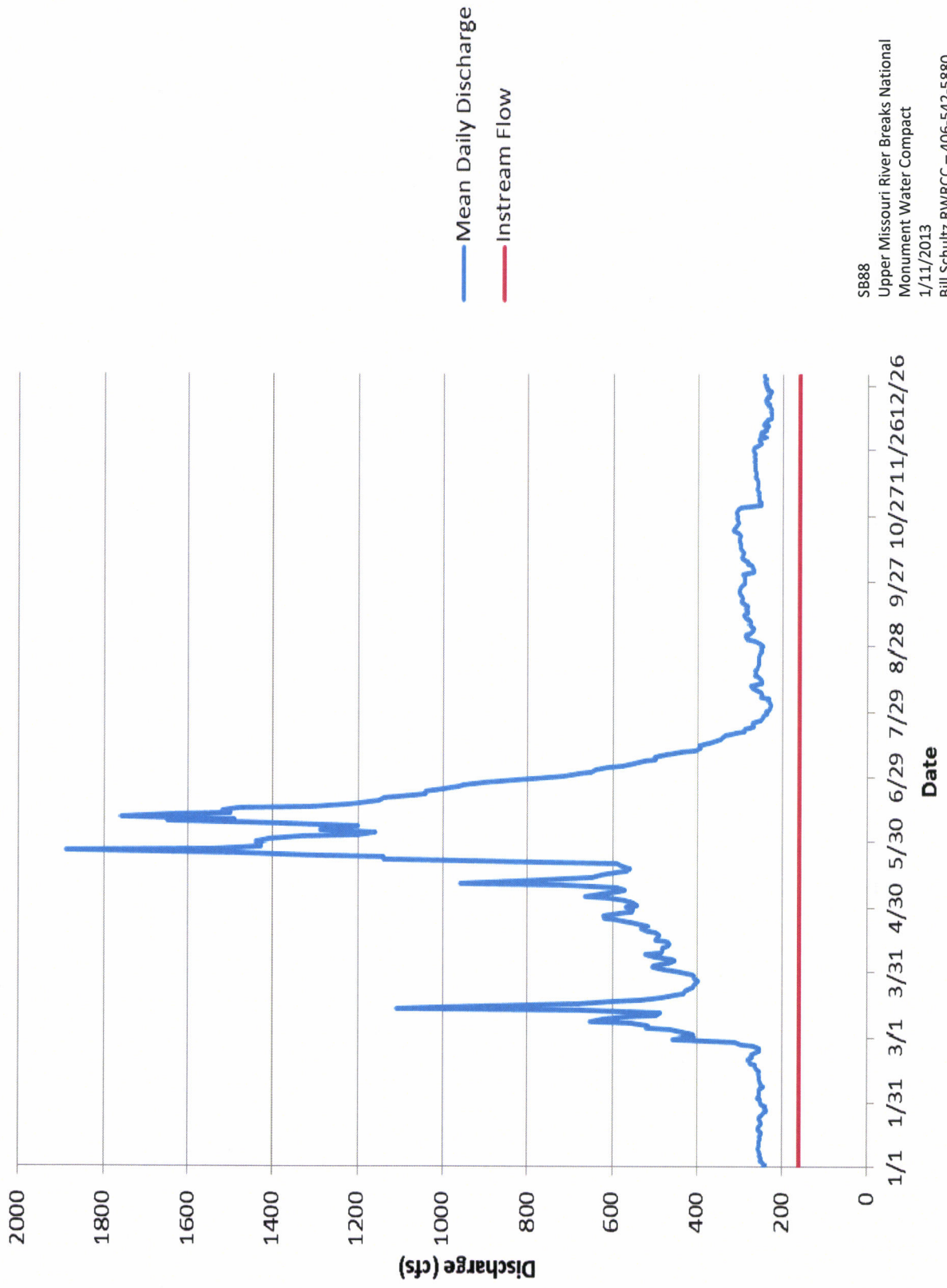
# Comparison of River Flow, River Stage, and Groundwater Elevation at Arrow Creek

## A12A



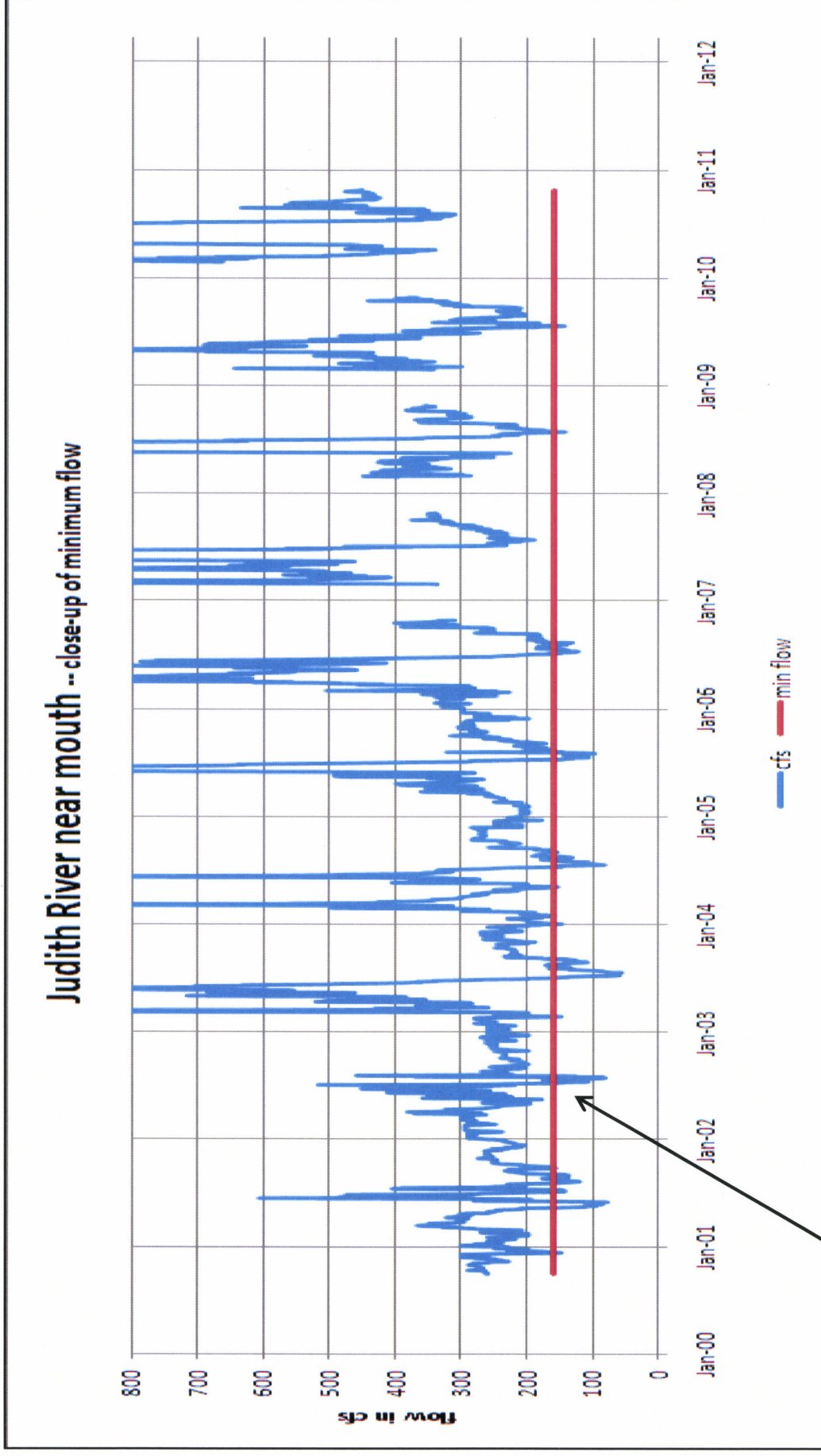
SB88  
Upper Missouri River Breaks National Monument Water Compact  
1/11/2013  
Bill Schultz RWRCC - 406-542-5880

# Judith River Mean Daily Discharge versus Judith River Instream Flow (160 cfs)



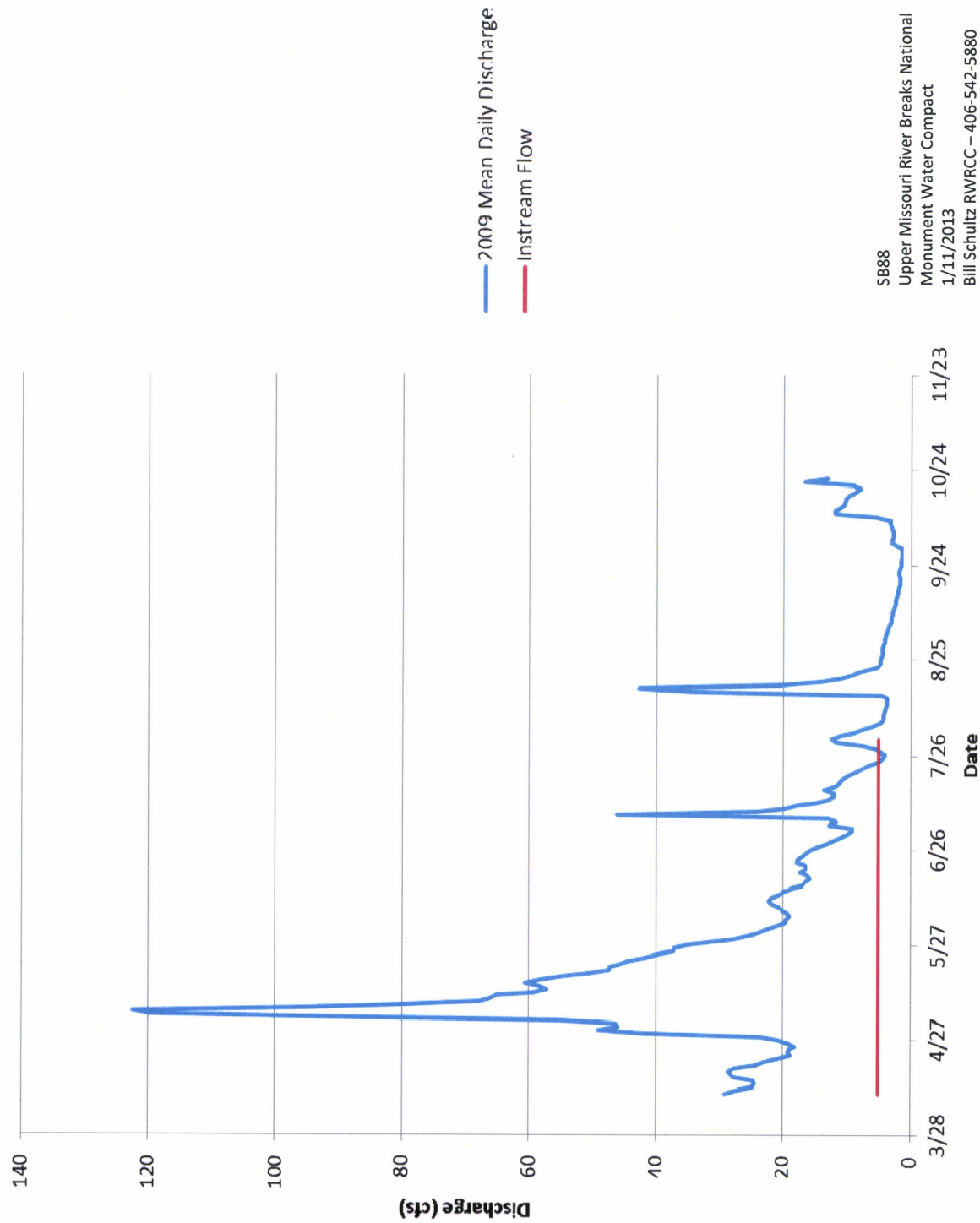


## Comparison of Instream Flow and Judith River Discharge (2000-2011)



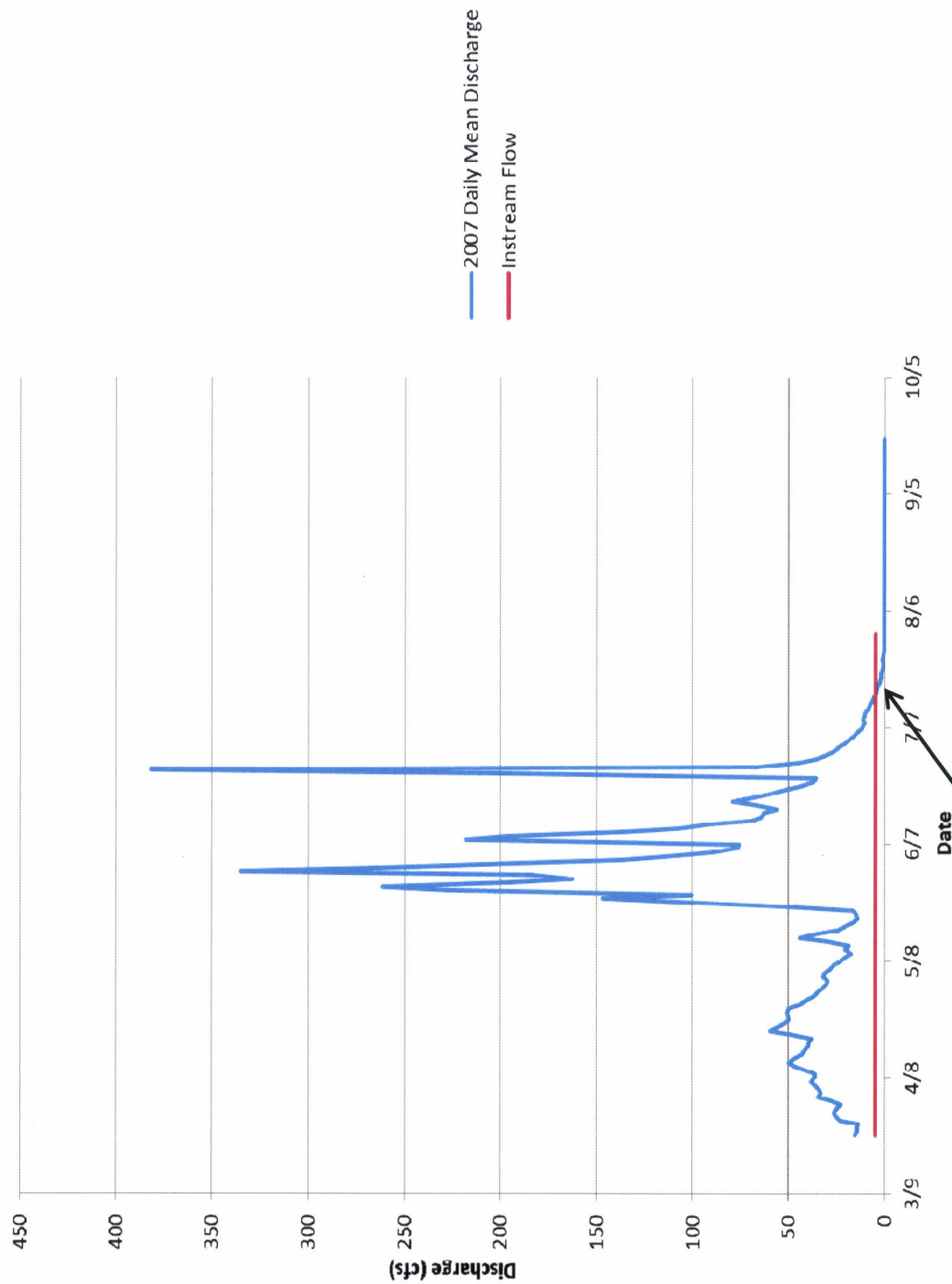
During extremely dry years, river flow has dropped below the instream flow for brief periods. The hydrograph reflects all existing water uses, which cannot be called.

# 2009 Arrow Creek Daily Mean Discharge versus Arrow Creek Instream Flow (5 cfs)



SB88  
Upper Missouri River Breaks National  
Monument Water Compact  
1/11/2013  
Bill Schultz RWRCC - 406-542-5880

## 2007 Arrow Creek Daily Mean Discharge versus Arrow Creek Instream Flow (5 cfs)



During extremely dry years, river flow has dropped below the instream flow for brief periods. The hydrograph reflects all existing water uses, which cannot be called.



# MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

Bill Schultz, Staff Director  
406-542-5880 [bischultz@mt.gov](mailto:bischultz@mt.gov)  
1625 11<sup>TH</sup> Avenue, P.O. Box 601201, Helena, Montana, 59620-1601  
Web site: <http://www.dnrc.mt.gov/rwrcc/>

*Working to "conclude compacts for the equitable division and apportionment of waters between the State and its people and the several Indian Tribes claiming reserved water rights within the state," and "between the State and its people and the federal government claiming non-Indian reserved waters within the state" (85-2-701, 703)*

- **Montana's Reserved Water Rights Compact Commission (RWRCC)** was established by the Montana Legislature in 1979 as part of the state-wide general stream adjudication process (85-2-701, MCA). The RWRCC is attached to the Department of Natural Resources & Conservation for administrative purposes. The Commission is scheduled to sunset on July 1, 2013.
- **The RWRCC is composed of nine members.** Four members are appointed by the Governor, one member is appointed by the Attorney General, two members are appointed by the President of the Senate and two members are appointed by the Speaker of the House of Representatives. A professional and technical staff of five supports the RWRCC including the staff director, one attorney, an agricultural engineer, one hydrologist, and a GIS specialist. The staff is scheduled to transfer to the DNRC to conduct compact implementation tasks upon sunset of the Commission.
- **The RWRCC is authorized to negotiate settlements** with federal agencies and Indian tribes that claim federal reserved water rights within the State. A federal reserved water right is a right to use water that is implied from an act of Congress, a treaty, or an executive order establishing a tribal or federal reservation. The amount of water to which a reservation is entitled depends on the purpose for which the land was reserved. In Montana, reserved water rights have been claimed for seven Indian reservations, for allotments for the Turtle Mountain Chippewa Tribe, for national parks, forests, and wildlife refuges, and for federally designated wild and scenic rivers.
- **The claims of the tribes and the federal agencies are suspended from adjudication** in the Montana Water Court while they are being negotiated by the RWRCC (85-2-217 MCA). Settlements negotiated by the RWRCC on behalf of the State are ratified by the Montana Legislature and the Tribes and approved by the appropriate federal authorities. In some instances, approval by the U.S. Departments of Justice and the Interior will be sufficient. In other cases, where federal authorization or federal appropriations are needed to implement provisions of the settlement, Congressional approval will be required.
- **Citizen participation** is an essential element of each negotiation and insures that the RWRCC's deliberations on behalf of the State address the concerns of the public and incorporate local solutions to water use problems. The negotiations are open to the public and additional public meetings are held during initial stages of negotiations and again when negotiations are nearing completion. Public comment may be submitted during the legislative phase and finally, objections may be made to the Montana Water Court prior to the incorporation of a compact into a basin decree.



## **COMPLETED COMPACTS**

*(Dates of passage and approval by Montana Legislature)*

**Fort Peck Tribe –Assiniboine and Sioux**  
*May 1985, 85-20-201, MCA*

**Northern Cheyenne Tribe**  
*September 1992, 85-20-301, MCA*  
Congress: P.L. 102-374 (1992)

**U.S. Department of the Interior, National Park Service**  
*Jan. 1994, 85-20-401, MCA*  
Yellowstone National Park  
Glacier National Park  
*May 1995*  
Little Bighorn Battlefield National Monument  
Big Hole National Battlefield  
Bighorn Canyon National Recreation Area

**U.S. Department of the Interior, Bureau of Land Management**  
*September 1997, 85-20-501, MCA*  
Upper Missouri National Wild and Scenic River  
Bear Trap Canyon Public Recreation Site

**Rocky Boy's Reservation – Chippewa Cree Tribe**  
*April 1997, 85-20-601, MCA*  
November 1999, Congress: P.L. 106-163

**U.S. Department of the Interior, Fish and Wildlife Service**  
*July 1997, 85-20-701, MCA*  
Black Coulee National Wildlife Refuge  
Benton Lake National Wildlife Refuge  
*April 1999, 85-20-801, MCA*  
Red Rock Lakes National Wildlife Refuge  
*March 2007, 85-20-1301, MCA*  
Bowdoin National Wildlife Refuge  
*April 2009, 85-20-1601*  
National Bison Range

**Crow Tribe**  
*June 1999, 85-20-901, MCA Special Legislative Session*  
Congress: Claims Resolution Act of 2010

**Fort Belknap - Gros Ventre and Assiniboine**  
*April 2001, 85-20-1001, MCA*

**U.S. Department of Agriculture, Agriculture Research Service**  
*March 2007, 85-20-1101, MCA*  
Fort Keogh Livestock and Range Research Laboratory  
*March 2007, 85-20-1201, MCA*  
Sheep Experiment Station

**U.S. Department of Agriculture, Forest Service**  
*April 2007, 85-20-1401, MCA*

**Blackfeet Tribe**  
*2009, 85-20-1501, MCA*

## **COMMISSIONERS**

*(Four-year terms)*

Chris Tweeten, Chairman  
Attorney General's Office appointee 2011

Richard Kirm  
Governor's appointee 2011

Gene Etchart  
Governor's appointee 2011

Dorothy Bradley  
Governor's appointee 2011

Mark DeBruycker  
Governor's appointee 2011

Representative Kathleen Williams  
House Speaker appointee 2012

Representative Daniel Salomon  
House Speaker Appointee 2011

Senator Debby Barrett  
Senate President Appointee 2011

Senator Dick Barrett  
Senate President Appointee 2012

# **MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION**

**Mr. Chris Tweeten, Chairman**  
17 North California  
Helena, MT 59601  
(406) 459-0255  
Email: [c.tweeten@bresnan.net](mailto:c.tweeten@bresnan.net)

**Rep. Kathleen Williams**  
P.O. Box 548  
Bozeman, MT 59771-0548  
Home: (406) 570-1917  
Email: [KathleenHD65@bresnan.net](mailto:KathleenHD65@bresnan.net)

**Mr. Gene J Etchart**  
P. O. Box 429  
Glasgow, MT 59230  
Home: (406) 228-2835  
Fax: (406) 228-4774  
Email: [basque@nemontel.net](mailto:basque@nemontel.net)

**Ms. Dorothy Bradley**  
P.O. Box 316  
Clyde Park, MT 59081  
Home: (406) 686-9163  
Email: [bench@wispwest.net](mailto:bench@wispwest.net)

**Mr. Mark DeBruycker**  
2649 12<sup>th</sup> Ln NW  
Bynum, MT 59419  
Office: (406) 466-2971  
Home: (406) 469-2371  
Cell: (406) 590-0355  
Fax: (406) 469-2372  
Email: [mtfeeder@yahoo.com](mailto:mtfeeder@yahoo.com)

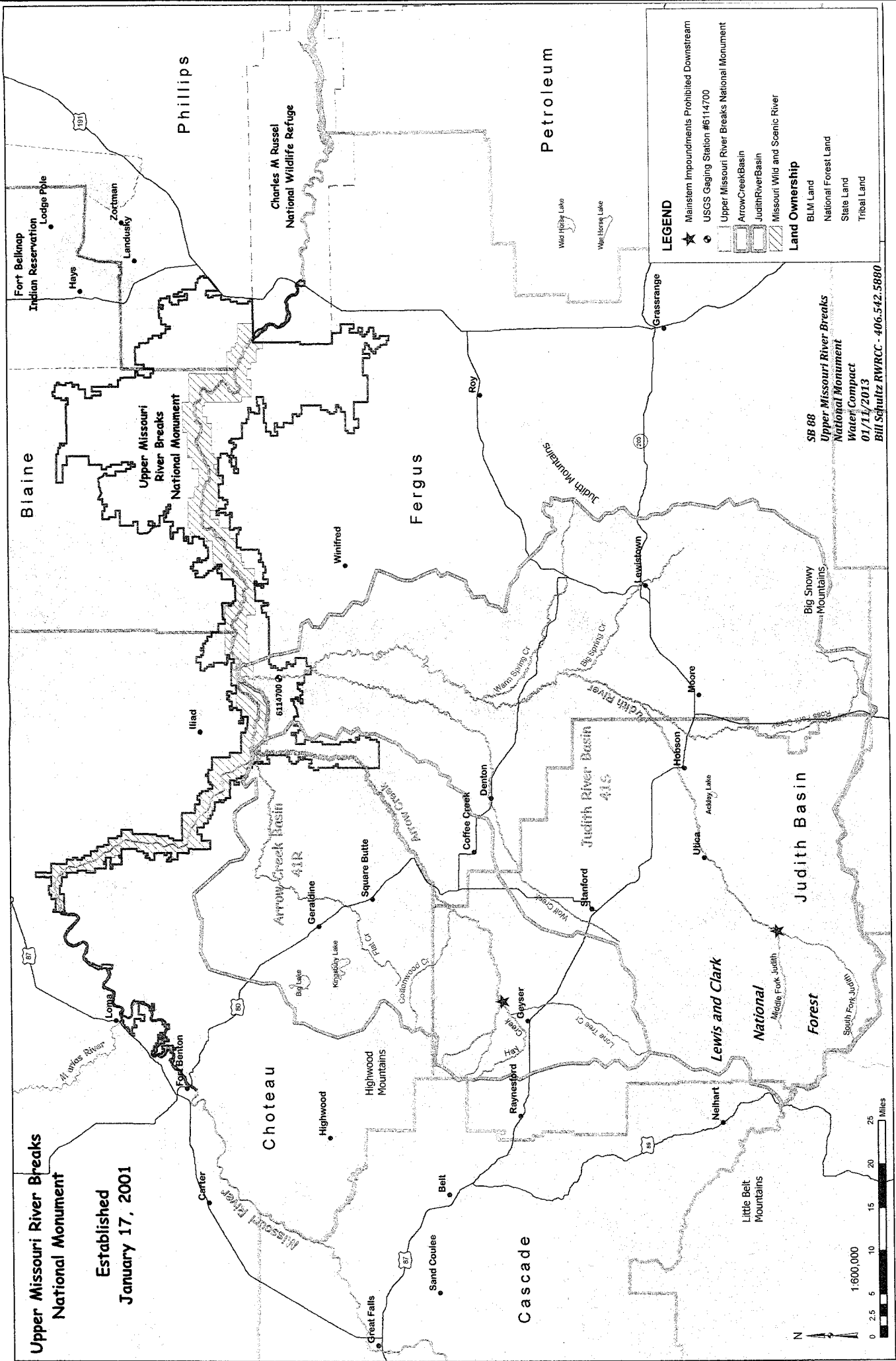
**Senator Debby Barrett**  
18580 MT Highway 324  
Dillon, MT 59725-8031  
Home: (406) 681-3177  
Cell: (406) 925-1361  
Fax: (406) 681-3278  
Email: [grt3177@smtel.com](mailto:grt3177@smtel.com)

**Mr. Richard Kirn**  
P. O. Box 1267  
Poplar, MT 59255  
Home: (406) 448-2226  
Cell: (406) 768-7195  
[kirnsurv@nemont.net](mailto:kirnsurv@nemont.net)

**Senator Dick Barrett**  
219 Agnes Avenue  
Missoula MT 59801-8730  
Home: (406) 396-3256  
Email: [rnewbar@gmail.com](mailto:rnewbar@gmail.com)

**Rep. Daniel Salomon**  
42470 Salomon Road  
Ronan, MT 59864-9272  
Home: (406) 675-0150  
Cell: (406) 253-9724  
Email: [dansalomon12@gmail.com](mailto:dansalomon12@gmail.com)







# Upper Missouri River Breaks National Monument

Established  
January 17, 2001





